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14327
RECORDATION NO. 14327
MAY 30 1984 - 10 03 AM

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May 29, 1984

INTERSTATE COMMERCE COMMISSION
Secretary of the Interstate
Commerce Commission
Recordation Office -
Interstate Commerce Commission
Twelfth & Constitution Avenue, N.W.
Room 2303
Washington, D.C. 20423

4-153A 076
No. MAY 30 1984
Date
Fee \$ 60.00
ICC Washington, D.C.

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of General Electric Credit Corporation counterparts of the following documents for filing and recordation:

- (1) Sale Agreement dated as of April 15, 1984 between General Electric Company, as Builder/Transferor, and General Electric Credit Corporation, as Purchaser/Transferee (a primary document); and
- (2) Lease of Railroad Equipment dated as of April 15, 1984 between General Electric Credit Corporation, as Lessor, and Consolidated Rail Corporation, as Lessee (a secondary document).

The names and addresses of the parties to the aforementioned agreements are as follows:

Sale Agreement

Builder/Transferor:

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

Purchaser/Transferee:

General Electric Credit Corporation
P.O. Box 8300
Stamford, Connecticut 06904

Counterpart - See V-Book

Lease Agreement

Lessor:

General Electric Credit Corporation
P.O. Box 8300
Stamford, Connecticut 06904

Lessee:

Consolidated Rail Corporation
1310 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

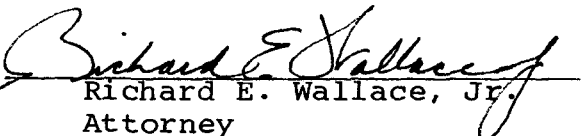
The equipment covered by each of the aforementioned agreements consists of fifty 3000 horsepower model C30-7A diesel-electric locomotives bearing Lessee identifying numbers CR6550-6599, inclusive, and ten 3200 horsepower model C320-8 diesel-electric locomotives bearing Lessee identifying numbers CR6610-6619, inclusive.

The enclosed Sale Agreement is a primary document to which the enclosed Lease is secondary. Please file and index both agreements under a single recordation number.

Enclosed is our check for \$60 for the required recordation fee. Please accept one counterpart of each of the enclosed agreements for your files, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

GENERAL ELECTRIC CREDIT CORPORATION

By: 
Richard E. Wallace, Jr.
Attorney

Enclosures

14327 ✓ A
RECORDATION NO. Filed 1425

MAY 30 1984 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

dated as of

April 15, 1984

between

GENERAL ELECTRIC CREDIT CORPORATION,

LESSOR

and

CONSOLIDATED RAIL CORPORATION,

LESSEE

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Schedule I - Description of Equipment
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Exhibit A - Sale Agreement

* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

LEASE OF RAILROAD EQUIPMENT, dated as of April 15, 1984, between CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (the "Lessee"), and GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation (the "Lessor").

WHEREAS, the Lessor is entering into a Sale Agreement, dated as of the date hereof substantially in the form of Exhibit A hereto (the "Sale Agreement") with General Electric Company (the "Builder"), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule I hereto (the "Equipment");

WHEREAS, the Lessee desires to lease such number of units of Equipment (the "Units") as are delivered and accepted and settled for under the Sale Agreement at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, General Electric Company, a New York corporation (the "Guarantor") will unconditionally guarantee to the Lessor certain payments of the Lessee pursuant to a Guaranty Agreement, dated as of the date hereof, (the "Guaranty Agreement");

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the Lessor and the Lessee agree as follows:

§ 1. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease or otherwise. The Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatever cause, any liens, encumbrances or rights of

others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the invalidity or unenforceability or lack of due authorization by Lessee of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that, so long as the Lessee's right to quiet enjoyment of the Units is not interfered with by the Lessor or any party claiming under the Lessor, except as provided in § 12 hereof, the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. Delivery and Acceptance of Units. Subject to satisfaction of the conditions set forth in § 7 hereof, the Lessor hereby agrees to accept delivery of the Units as provided herein and simultaneously to lease the same to the Lessee and the Lessee hereby agrees to lease the Units from the Lessor. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units to be delivered by the Builder. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is to be delivered by the Builder. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same and, if such Unit is found to be acceptable, to accept delivery of such Unit (the date of such acceptance being called a "Delivery Date"), and the Lessee shall execute and deliver to the Lessor a certificate of acceptance (the "Certificate of Acceptance") substantially in the form annexed hereto as Schedule III, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for the Units, (i) interim rent in respect of each Unit, payable in arrears on the first day of the month following the last Delivery Date, but in no event later than January 1, 1985 (such payment date being called the "Basic Rent Commencement Date"), in an amount equal to .02618112% of the Purchase Price (as defined in the Sale Agreement) of such Unit for each day from the date such Unit is delivered to and accepted by the Lessee to but not including the Basic Rent Commencement Date, and (ii) basic rent in 30 consecutive payments payable in arrears on the sixth month anniversary date of the Basic Rent Commencement Date and semiannually thereafter (each of such 30 consecutive dates being hereinafter called a "Rental Payment Date"). Each payment of basic rent shall be in an amount equal to 4.71260% of the Purchase Price of each Unit then subject to this Lease.

If any Rental Payment Date is not a business day the rental payment otherwise payable on such Date shall be payable on the next preceding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Philadelphia, Pennsylvania are authorized or obligated to remain closed.

The Lessee agrees to make each payment provided for herein as contemplated by this paragraph at Manufacturers Hanover Trust Company, 600 Fifth Avenue, New York, New York 10020 to the Account of General Electric Credit Corporation, Account No. 135-0-70380, in Federal or other funds immediately available to the Lessor by 11:00 a.m., New York time, on the date such payment is due.

§ 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 8 and 12 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof (such period being hereinafter called the "Lease Term"). The obligations of the Lessee and the Lessor hereunder (including, but not limited to, the obligations of the Lessee under §§ 8, 9, 10, 16 and 18 hereof and the obligation of the Lessor under §§ 8, 9 and 18 hereof) shall survive the expiration or termination of the term of this Lease and the full payment of all amounts payable under this Lease.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identification number set forth in Schedule I hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on

each side of each Unit, in letters not less than one inch in height, the words "Ownership filed with the Interstate Commerce Commission", with appropriate changes thereof as from time to time may be required by law, in the opinion of the Lessor, in order to protect the Lessor's title to and interest in such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease shall have been filed and deposited and (ii) the Lessee shall have furnished the Lessor an opinion of counsel to the effect that such statement has been so filed and deposited, that such filing and deposit will protect the Lessor's rights in such Units and that no other filing, deposit or giving of notice with or to any federal, state or local government or agency thereof is necessary to protect the rights of the Lessor in such Units.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. Representations and Warranties. The Lessee represents and warrants to the Lessor as follows:

(a) The Lessee is not entering into this Lease or any other transaction contemplated hereby, directly or indirectly in connection with any arrangement or understanding by the Lessee in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

(b) The Lessee has furnished to the Lessor its Annual Report for 1983 ("Annual Report") containing a consolidated balance sheet of the

Lessee as of December 31, 1983, and related consolidated statements of income, deficit and changes in financial position for the year then ended, certified by the Lessee's independent certified public accountants; such consolidated financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles, applied on a consistent basis throughout the period covered thereby; and such statements present fairly the financial condition of the Lessee at such date and the results of its operations for such period.

(c) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has the corporate power and authority and legal right to carry on its business as now conducted and, except as set forth in the disclosure letter dated as of May 25, 1984, from the Lessee, a copy of which has been delivered to the Lessor ("Disclosure Letter"), is duly qualified to do business and in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under this Lease or the interests of the Guarantor as subrogee of the Lessor.

(d) The execution, delivery and compliance by the Lessee with all of the provisions of this Lease are within the corporate powers of the Lessee, and are legal and will not conflict with, result in any breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Lessee under the provisions of, any charter instrument, by-law, bond, debenture, note, mortgage, indenture, deed of trust, agreement or other instrument to which the Lessee is a party or by which it may be bound or to which any of its property may be subject.

(e) No authorization or approval from, consent of or filing, registration or qualification with any governmental or public body or authority of the United States of America or Canada, or of any of the States or provinces

thereof or the District of Columbia, is necessary for the execution, delivery and performance by the Lessee of this Lease or the transactions contemplated hereby.

(f) Except as set forth in the Disclosure Letter, there are no proceedings pending, or to the knowledge of the Lessee threatened, against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Lessee, or the ability of the Lessee to perform its obligations under this Lease. Except as referred to in the Annual Report, the Lessee is not in default with respect to any judgment, award or order of any court, governmental authority or arbitration board or tribunal. Except as set forth in the Disclosure Letter, since December 31, 1983, there has not been any material adverse change in the assets, liabilities, business or condition (financial or other) of the Lessee.

(g) Except as set forth in the Disclosure Letter, all tax returns required to be filed by the Lessee in any jurisdiction have in fact been filed, and all taxes, assessments, fees and other governmental charges upon the Lessee, or upon any of its properties, income or franchises, which are due and payable by the Lessee have been paid (and any thereof not due and payable by the Lessee do not encumber the properties, income or franchises of the Lessee) and the provisions for taxes on the books of the Lessee are adequate. Except as set forth in the Disclosure Letter, the Lessee does not know of any proposed or potential additional material tax assessment against it or basis for such assessment against it.

(h) Except as set forth in the Disclosure Letter, the Lessee is not in violation of any laws, ordinances or governmental rules or regulations to which it is subject, and has not failed to obtain any licenses, permits, franchises or other governmental authorizations necessary to the ownership of its property or to the conduct of its business, which violation or

failure to obtain might materially adversely affect its ability (financial or other) to perform its obligations under this Lease.

(i) The Lessee has good title to (or valid leasehold estates in) all the property it purports to own (or lease) (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the balance sheet referred to in § 6(b) (except as sold or otherwise disposed of in the ordinary course of business).

(j) Prior to the delivery of any Unit pursuant hereto, this Lease will be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and, within 21 days from the execution hereof, will be deposited with the Registrar General of Canada (and provision made for publication of notice of such deposit in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada, and such filing pursuant to 49 U.S.C. § 11303 will protect the Lessor's rights in and to this Lease and the Equipment, and such deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada will protect the Lessor's rights in and to this Lease and the Equipment, and no other filing, recording, registration or deposit (or giving of notice) with any other Federal, state or local government or agency of the United States or Canada is necessary in order to protect the rights of the Lessor hereunder in and to the Equipment in any state of the United States or the District of Columbia or the rights of the Lessor hereunder in Canada or any province thereof.

(k) This Lease has been duly authorized and has been duly executed and delivered by it and, assuming due authorization, execution and delivery hereof by the Lessor, constitutes a valid, legal and binding agreement, enforceable in accordance with its terms.

(l) The Lessee has not directly or indirectly, nor has any person on its behalf, offered or sold any interest in the Equipment,

this Lease or any similar security to, solicited offers to buy any interest in the Equipment, this Lease or any similar security from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any interest in the Equipment, this Lease or any similar security with, any person so as to require registration of the sale of any interest in the Equipment or this Lease in accordance with the provisions of the Securities Act of 1933. The Lessee will not offer any interest in the Equipment to, or solicit any offer to buy any thereof from, any other person or approach or negotiate with any other person in respect thereof, so as to require registration of the sale of any interest in the Equipment or any similar security in accordance with the provisions of said Securities Act.

(m) There are no liens, security interests or other encumbrances of any nature affecting the right, title or interest of the Lessor in and to the Equipment and this Lease resulting from or constituting claims against the Lessee or resulting from any action of the Lessee not related to the transactions contemplated by this Lease.

§ 7. Conditions of Lessor's Acceptance of Delivery. The obligations of the Lessor to accept any Unit, to make payments with respect to such Unit and to lease such Unit to Lessee pursuant to § 2 hereof shall be subject to the receipt by the Lessor, on or prior to the first date of delivery of any Unit under the Sale Agreement ("First Delivery Date"), of the following documents, dated (except for the document referred to in § 7(f)) on or not more than five days prior to the First Delivery Date:

(a) An opinion of White & Case, special counsel for the Lessor, to the effect that:

(i) this Lease, assuming due authorization, execution and delivery by the Lessee, constitutes a legal, valid and binding instrument of the Lessee;

(ii) this Lease has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and no other filing or recordation is necessary for the protection of the rights of the Lessor herein or in the Equipment in any state of the United States of America or the District of Columbia;

(iii) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia is, to the knowledge of said counsel, necessary for the execution, delivery and performance of this Lease;

(iv) under the circumstances contemplated by this Lease it is not necessary to register this Lease under the Securities Act of 1933, as in effect on the date of such opinion; and

(v) the legal opinions referred to in subparagraphs (b), (c), and (e) of this § 7 are satisfactory in form and scope to said special counsel and that in their opinion the Lessor and they are justified in relying thereon;

and as to such other matters incident to the transactions contemplated by this Lease as the Lessor may reasonably request.

(b) An opinion of counsel for the Lessee to the effect set forth in clauses (i) (without the assumption contained therein), (iii) and (iv) of § 7(a), in so far as such matters relate to the Lessee, and to the further effect that:

(i) the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, has all requisite power and authority to execute and deliver and to

perform its obligations under this Lease and to own its properties and to carry on its business as now conducted, and, except as set forth in the Disclosure Letter, is duly qualified to do business and is in good standing in such other jurisdictions in which the failure to so qualify or be in good standing could adversely affect its ability to perform its obligations under this Lease or the interests of the Guarantor as subrogee of the Lessor;

(ii) neither the execution and delivery of this Lease nor the consummation of the transactions herein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation (as amended) or the by-laws (as amended) of the Lessee or, to the knowledge of such counsel after due inquiry, of any bond, debenture, note, mortgage, indenture, deed of trust, lien, agreement or other instrument to which the Lessee is then a party or by which it or its property may be bound, or constitute (with or without the giving of notice or the passage of time or both) a default thereunder, or result in the creation of any lien upon any property of the Lessee pursuant to any provisions of any thereof;

(iii) neither the execution and delivery by the Lessee of this Lease nor the consummation of the transactions herein contemplated nor the fulfillment of, or compliance with, the terms and provisions hereof will, to the knowledge of said counsel after due inquiry, conflict with, or result in a breach or violation of, any of the terms, conditions or provisions of any law, or any regulation, rule, order, award, injunction or decree of any court or governmental instrumentality or arbitrator;

(iv) this Lease has been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision has been made for publication of notice of such deposit in The Canada Gazette in accordance with said Section 86, and such filing with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 will protect the Lessor's rights in and to this Lease and the Equipment, and such deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada will protect the Lessor's rights in and to this Lease and the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency thereof is necessary in order to protect the rights of the Lessor hereunder in and to the Equipment in any state of the United States or the District of Columbia or the rights of the Lessor hereunder in Canada or any province thereof;

(v) to the knowledge of such counsel after due inquiry, except as set forth in the Disclosure Letter (x) there is no proceeding pending or threatened against or affecting the Lessee in any court or before any governmental authority or arbitration board or tribunal which involves the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or other) of the Lessee, or the ability of the Lessee to perform its obligations under this Lease and (y) the Lessee is not in default with respect to any order, judgment or award of any court, governmental authority or arbitration board or tribunal;

(vi) to the knowledge of such counsel, the Lessee has good title to (or valid leasehold estates in) all the property it

purports to own (or lease) (although the deeds evidencing such title have not all been recorded) and all franchises and rights necessary to operate the same, including the property reflected in the balance sheet referred to in § 6(b) hereto (except as sold or otherwise disposed of in the ordinary course of business); and

(vii) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Lessee, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Lessor therein.

(c) An opinion of counsel for the Builder to the effect that (i) the Builder is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; (ii) the Sale Agreement has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other party thereto, is a legal and valid instrument binding on the Builder; and (iii) the execution, delivery and compliance by the Builder with the provisions of the Sale Agreement is within the corporate powers of the Builder, is legal and will not conflict with, result in any breach of any of the provisions of, constitute a default under, or result in the creation of any lien upon any property of the Builder under the provisions of, any charter instrument, by-law or, so far as is known to such counsel, any agreement or any other instrument to which the Builder is a party or by which it may be bound.

(d) A certificate of an officer of the Lessee to the effect that (on the First Delivery Date and after giving effect to the delivery on such date) (i) the Lessee's representations and

warranties contained in this Lease are true on and as of the First Delivery Date, with the same effect as though made on such date, (ii) the Lessee is not currently in default nor does a condition exist nor has an event occurred which with the lapse of time and/or the giving of notice would constitute a default under this Lease and (iii) except as set forth in the Disclosure Letter, there has not been any material adverse change in the business prospects or financial condition of the Lessee since the date of the financial statements referred to in § 6(b).

(e) A tax opinion of Sullivan & Cromwell in form, scope and substance satisfactory to the Lessor.

(f) An opinion of an expert appraiser (which may be the Builder and which opinion need not be dated on or more than five days prior to the First Delivery Date) satisfactory to the Lessor to the effect that the estimated fair market value and useful life of the Equipment at the end of the Lease Term meet the tests set forth in Section 4(1)(C) of Revenue Procedure 75-21 and that the units of Equipment are expected to be useful and usable by the Lessor at the end of the Lease Term for purposes other than the continued leasing or transfer to the Lessee or any member of the Lessee Group (as defined in Revenue Procedure 75-21).

(g) A certificate of an officer of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required by § 9 hereof.

In expressing the opinions specified in this § 7, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally or by equitable principles of general application if equitable remedies are sought. In expressing the opinion specified in subparagraph (a) of this § 7, counsel may rely as to any matter

governed by the law of any jurisdiction other than the State of New York or the United States, on the opinion of counsel for the Builder or the Lessee as to such matter. In expressing the opinions specified in subparagraph (c), counsel may limit their opinion to matters of the laws of the United States and of the State of New York and the Commonwealth of Pennsylvania.

§ 8. Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee assumes responsibility for, and agrees to pay, hold harmless and indemnify on an after-tax basis the Lessor against, all taxes, fees, withholdings and other governmental charges of any nature whatsoever, including, without limitation, penalties and interest (all such taxes, fees, withholdings, governmental charges, penalties and interest being herein-after called "Taxes"), imposed on, incurred by or asserted against the Lessor or the Units or any thereof on account of, or with respect to, this Lease or any document referred to herein (other than the Guaranty Agreement) or any of the transactions contemplated hereby (other than the Guaranty Agreement) or the manufacture, purchase, acceptance or rejection of the Units or any thereof or the ownership, delivery, nondelivery, leasing, re-leasing, subleasing, possession, use, operation, maintenance, repair, condition, sale, return or other disposition of the Units or any thereof or any indebtedness with respect thereto or the rentals, receipts, earnings or gains arising therefrom; provided, however, that there shall be no indemnification hereunder for (i) any Taxes imposed on or measured by any fees or compensation received by the Lessor, (ii) Federal income Taxes and income or franchise Taxes imposed on the Lessor by any jurisdiction in which the Lessor has an office or is otherwise deemed to be doing business, except to the extent that indemnification is provided for in § 18 hereof and (iii) any Taxes resulting from the negligence or willful misconduct of the Lessor. The Lessee shall pay all Taxes for which it assumes liability hereunder when such Taxes are due and will indemnify the Lessor to the extent required by this § 8 on the later of the date such Taxes are paid or ten days after receipt of a written request by the Lessor for indemnification specifying the amount to be paid, the basis on which such amount was determined and the nature of the Taxes in question; provided, however, that if any Taxes are being contested in accordance with the sixth paragraph of this § 8, any payment shall be made at the time therein provided.

In the event that the Lessor shall become obligated to make any payment to the Builder or otherwise pursuant to any corresponding provision of the Sale Agreement not covered by the foregoing paragraph of this § 8, the Lessee shall pay such additional amounts (which shall also be deemed Taxes hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any returns, statements or reports with respect to Taxes are required to be made, the Lessee will make such returns, statements and reports in such manner as to show the interest of the Lessor in the Units; provided, however, that the Lessor shall, with respect to any state or political subdivision thereof of the United States of America, prepare and file such returns, statements, and reports relating to sales or use taxes, and taxes, fees, and charges on or measured by the Lessor's earnings or gross receipts arising from the Units, or the value added by the Lessor thereto, as the Lessor shall determine are required to be filed based upon usage information provided by the Lessee, and the Lessor shall remit the amount thereof upon payment by the Lessee to the Lessor (such payment to be made promptly upon demand by the Lessor therefor) of such taxes, fees and charges except as provided above. To the extent that the Lessor has information necessary to the preparation of such returns, statements and reports, it will furnish such information to the Lessee.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this § 8, the Lessor hereby authorizes the Lessee to act in its own name and on its behalf; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever reasonably requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 8. The Lessee shall

also furnish promptly upon request such data as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of taxing jurisdictions.

If any taxing authority shall assert liability for any Taxes or propose an increase in the liability of the Lessor for any Taxes (such assertion or such proposed increase being hereinafter called a "Claim"), indemnification for which would be required under this § 8, the Lessor will notify the Lessee within a reasonable time of such Claim in writing. If the Lessee delivers to the Lessor written notice of its desire to contest such Claim within 30 days after receipt of notice responsibility of the Lessee and, in either case, shall be conducted entirely at its expense. The Lessor will cooperate with any reasonable request made by the Lessee in connection therewith; provided, however, that the Lessor may determine (after consultation with the Lessee) in what court or other forum such contest will be conducted and whether such contest will proceed by payment of the Taxes in contemplation of a suit for refund and the Lessor shall not be required to take any action pursuant to this paragraph unless and until the Lessee shall have agreed to indemnify the Lessor in a manner satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting the validity of any Claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such Claim (including fees and disbursements of counsel). If in any such contest the decision is made to pay the Taxes and sue for a refund, the Lessee will advance to the Lessor on an interest-free basis sufficient funds to pay the Taxes which are to be contested. Upon receipt by the Lessor of a refund of any Taxes paid by the Lessee pursuant to this paragraph, the amount of such refund and any interest paid to the Lessor with respect thereto shall be paid to the Lessee forthwith upon receipt by the Lessor and the obligations of the Lessor under this sentence shall survive the expiration or termination of this Lease.

The Lessee agrees to pay all amounts due under this § 8 free of any Taxes and to indemnify the Lessor against any Taxes imposed by reason of any payment made by the Lessee so that the Lessor shall receive an amount which, net of any Taxes or other charges required to be paid by

the Lessor in respect thereof, shall be equal to the amount of payment otherwise required hereunder. Without limiting the foregoing, the amount which the Lessee shall be required to pay with respect to any Taxes subject to indemnification under this § 8 shall be an amount sufficient so that, after considering the tax and other effects of the Taxes in question and the receipt of indemnification payments hereunder, the Lessor will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow as the Lessor would have realized had such Taxes not been incurred or imposed.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Taxes pursuant to this § 8, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

§ 9. Maintenance; Casualty Occurrences; Insurance. The Lessee at its own expense will maintain and service each Unit in accordance with prudent industry practice and which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or release upon default by the Lessee. In no event shall any Unit be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment. The Lessee will permit the Builder or a qualified engineer satisfactory to the Lessor sufficient access to the Units so that the Builder or such engineer can furnish the Lessor with a certificate no later than the last business day of August of each year, commencing in August 1985, setting forth the identification numbers of all Units which are then in the condition required by clauses (a), (b) and (c) of the first sentence of this § 9 and certifying that all such Units are in such condition.

In the event that any Unit shall be or become lost, stolen, destroyed or, in the opinion of the Lessee,

worn out or irreparably damaged, from any cause whatsoever, permanently returned to the Builder pursuant to any patent indemnity provision of the Sale Agreement, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of this Lease, or by any other government or governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 16 hereof, the Lessee shall promptly (but in any event within 120 days after such Casualty Occurrence) and fully notify the Lessor with respect thereto. On the earlier of (i) the 60th day following such notice (but not earlier than the first Rental Payment Date) and (ii) the Rental Payment Date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit then due and payable or accrued to such date (computing, in the case of basic rent, the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is 180 days) plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the Rental Payment Date on or next preceding the date of such Casualty Occurrence in accordance with Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or permanent return to the Builder of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis and the Lessee may be a purchaser of such Unit and shall notify the Lessor prior to any such purchase by the Lessee. Provided that the Lessee has previously paid the Casualty Value to the Lessor and provided no Event of Default or other event which after notice or lapse of time or both would become an Event of Default (such other event called a "Default") shall have occurred and be continuing, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor. The Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit permanently returned to the Builder pursuant to any patent indemnity provision of the

Sale Agreement an amount equal to any patent indemnity payment in respect of such Unit made by the Builder under the Sale Agreement.

The Casualty Value of each Unit as of any Rental Payment Date shall be that percentage of the Purchase Price of such Unit as is set forth in Schedule II hereto opposite such date.

Whenever any Unit shall suffer a Casualty Occurrence after the final payment of rent in respect thereof is due pursuant to § 3 hereof and before such Unit shall have been returned in the manner provided in § 16 hereof, the Lessee shall promptly (as provided above) and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to 22% of the Purchase Price of such Unit.

In the event of the requisition (other than a requisition which constitutes a Casualty Occurrence) for use by the United States Government or by any other government or governmental entity (hereinafter collectively called the "Government") of any Unit during the term of this Lease, all of the Lessee's obligations (including, without limitation, the obligation to pay rent) under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, the Lessee shall be obligated to return such Unit to the Lessor pursuant to § 13 or 16 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but the Lessee shall in all other respects comply with the provisions of said § 13 or 16, as the case may be, with respect to such Unit. All payments received by the Lessor or the Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee, provided no Event of Default or Default shall have occurred and be continuing; and all payments received by the Lessor or the Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Lessor.

Except as hereinabove in this § 9 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Units to the Lessor, at its own expense, cause to be carried and maintained casualty insurance and public liability insurance in respect of the Units at the time subject hereto, against such risks, in such amounts and on such terms and conditions as are satisfactory to the Lessor and, in any event, comparable in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it, but in no event shall such coverage be for amounts or against risks less than the prudent industry standard for Class I line-haul railroads. All policies with respect to such insurance shall provide that the Lessor shall be named an assured and for payments to the Lessor as its interest may appear, shall provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or amendment (and the Lessee shall provide 30 days' prior written notice to the Lessor in any such event), shall include waivers by the insurer of all claims for premiums against the Lessor and shall provide that losses are payable notwithstanding, among other things, any act of negligence of the Lessee or the Lessor, more hazardous use or occupation of the Units than that permitted by such policies, any breach or violation by the Lessee or the Lessor of any warranty, declaration, condition or other provision contained in any such policy. Each such insurance policy shall expressly provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Lessee) shall operate in the same manner as if they were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by the Lessor. The Lessee shall, not later than June 15 of each year, commencing June 15, 1985, furnish to the Lessor a certificate of an independent insurance broker acceptable to the Lessor evidencing the maintenance of the insurance required hereunder and shall furnish certificates evidencing renewal 15 days prior to the expiration date of such policy or policies. If the Lessor shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, the Lessor shall, subject to the Lessee's having made payment of the Casualty Value in respect of such Unit and provided no Event of Default or Default shall have occurred and be continuing, pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such

proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired, provided no Event of Default or Default shall have occurred and be continuing.

§ 10. Reports. On or before April 30 in each year, commencing with the calendar year 1985, the Lessee will furnish to the Lessor and the Builder a certificate signed by the Chief Mechanical Officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof have been preserved or replaced. The Lessor or the Builder, at its sole expense, shall have the right by its agents to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Builder may request during the continuance of this Lease.

The Lessee shall promptly notify the Lessor of any occurrence of an Event of Default or Default, specifying such Event of Default or Default and the nature and status thereof.

§ 11. Disclaimer of Warranties; Compliance with Laws and Rules; Indemnification. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION OF ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Lessor and the

Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the Sale Agreement; provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, subleasing, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all applicable laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units (all such laws and rules to such extent being hereinafter called "Applicable Laws"), and in the event that, prior to the expiration of this Lease or any renewal thereof, Applicable Laws require any alteration, replacement, addition or modification of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may at its own expense, in good faith,

contest the validity or application of any such Applicable Laws in any reasonable manner which does not, in the opinion of the Lessor (which opinion shall be promptly given to the Lessee), adversely affect the property or rights of the Lessor under this Lease. The Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units (and do not adversely and materially affect the value of the Units). The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are described in the following sentence. Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of the provisions contained hereinabove, (ii) the cost of which is included in the Purchase Price of such Unit, (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Interstate Commerce Commission, the United States Department of Transportation or any other regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor.

The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent, trademark and copyright liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default, a Default or an Event of Default under this Lease or any sublease entered into pursuant to § 14 hereunder, the ownership of any Unit, the manufacture, ordering, acquisition, use, operation, condition, purchase, sublease, delivery, nondelivery, acceptance, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except

as otherwise provided in § 16 of this Lease ("Indemnified Matters"); provided, however, that the foregoing indemnification shall not constitute a guaranty of the residual value of the Units. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

Except as otherwise expressly provided in this Lease, the Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all of the Units.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required filing date (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, or the leasing thereof to the Lessee.

§ 12. Default. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3 or 9 hereof, and such default shall continue for five business days;

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof;

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 15 days after the earlier of (i) written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any officer of the Lessee;

(D) any representation or warranty of a material fact made by the Lessee herein or in any certificate or statement furnished to the Lessor pursuant to or in connection with this Lease proves untrue in any material respect as of the date of issuance or making thereof (other than any representation for which the Lessee has agreed to indemnify the Lessor under § 18 hereof); or

(E) a petition for reorganization under Title 11 of the United States Code as now constituted or as hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under such bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of such obligations), and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the

Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceeding shall have been commenced;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents, subject to compliance with all mandatory requirements of law, enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all rentals, indemnity payments or other amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing, in the case of basic rent, the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is 180 days) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum, with respect to each Unit, equal to the excess of the present value, at the time of such termination, of the entire

unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rental which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 8-1/2% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated; or (y) an amount equal to the excess, if any, of the Casualty Value as of the Rental Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Unit at such time; provided, however, that in the event the Lessor shall have sold any Unit, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Lessor and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Rental Payment Date on or next preceding the date of termination, over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against

the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessee hereby waives any and all claims against the Lessor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in §1168 of the Bankruptcy Code or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Units upon an Event of Default under this Lease regardless of whether the Lessee is in reorganization.

No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

§ 13. Return of Units upon Default. If this Lease shall terminate pursuant to § 12 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit so delivered shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 9 hereof. For the purpose of delivering possession, the Lessee shall:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return this Unit or Units) place such Units upon such storage tracks of the Lessee or any of its affiliates as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and, upon application to any court of equity having jurisdiction, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will, at its own expense, maintain and keep the Equipment in the condition required by clauses (a), (b) and (c) of the first sentence of § 9 hereof and will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which .02618112% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

Without in any way limiting the foregoing obligations of the Lessee under this § 13, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 14. Assignment; Possession and Use. So long as no Event of Default exists hereunder, this Lease shall not be assignable in whole or in part by the Lessor or any member of an affiliated group which includes Lessor (as defined in Section 1504 of the Internal Revenue Code of 1954, as amended) without the written consent of Lessee, which consent shall not be unreasonably withheld, but no such consent shall be required for an assignment to another member of an affiliated group which includes Lessor. In the event of any such assignment, conveyance or transfer, the transferee shall become a party to this Lease and will agree to be bound by all the terms of and will undertake all of

the obligations of the Lessor contained in this Lease. No such assignment, conveyance or transfer shall violate any provision of law or regulation or create a relationship which would be in violation thereof. Upon any such disposition by the Lessor to a transferee as above provided, such transferee shall succeed to the interests of the Lessor and shall be deemed the "Lessor" for all purposes hereof and shall be deemed to have made all the payments previously made by its predecessor, and each reference herein to the Lessor shall thereafter be deemed to include such transferee.

So long as (i) no Event of Default exists hereunder, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and, without the prior written consent of the Lessor, the Lessee may sublease the Units to, or permit their use by, a user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by the Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease; provided, however, that (i) the Lessor's consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months, (ii) the Lessee shall not sublease or permit the sublease or use of any Unit to service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America, and (iii) any such sublease or use shall be consistent with the provisions of § 18 hereof. No such assignment or sublease shall relieve the Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or resulting from claims against the Lessor not

related to the ownership of the Units) upon or with respect to any Unit or the interest of the Lessor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

§ 15. Lessor's Right to Perform for the Lessee.

If the Lessee fails to perform or comply with any of its agreements contained herein, the Lessor may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Lessor incurred in connection with such performance or compliance, together with interest on such amount at the rate provided in § 19, shall be payable by the Lessee upon demand. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee hereunder or be deemed to cure the default of the Lessee hereunder.

§ 16. Return of Units upon Expiration of Term.

The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate from a list of available storage sites as Lessee shall provide Lessor, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding 90 days following notification to the Lessor by the Lessee that all the Units have been assembled and delivered for storage and transport the same, at any time within such 90-day period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Units to be at the expense and risk of the Lessee (except for the insurance required by § 9 hereof which shall be provided at the Lessor's expense); and in the event that any Unit shall suffer a Casualty Occurrence during such storage period, the Lessee shall pay the Lessor the Casualty Value thereof as provided in § 9 hereof. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that (i) the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or

of its employees or agents, for any injury to, or the death of, any person exercising, on behalf of either the Lessor or any prospective purchaser, lessee or user, such rights of inspection and (ii) the Lessee shall not be liable for any damage caused by the negligence of such person. Each Unit returned to the Lessor pursuant to this § 16 shall be in the condition required by clauses (a), (b) and (c) of the first sentence of § 9 hereof. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance thereof. During any storage period, the Lessee will, at its own expense, maintain and keep the Units in the condition required by clauses (a), (b) and (c) of the first sentence of § 9 hereof. All rent and per diem charges earned in respect of the Units after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day from the date of such termination an amount equal to the amount, if any, by which 0.02618112% of the Purchase Price of such Unit for each such day exceeds the actual earnings received by the Lessor with respect to such Unit for each such day.

§ 17. Recording. The Lessor will cause this Lease to be filed in accordance with 49 U.S.C. §11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake any filing, registering, deposit, and recording required by the Lessor and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to its satisfaction, of the Lessor's rights in the Units, or for the purpose of carrying out the intention of this Lease; and the Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 17, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

This Lease shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 18. (a) Indemnity for Federal and Other Income Tax Benefits. This Lease has been entered into on the assumption that this Lease will be recognized as a lease for Federal, state and local income or franchise tax purposes and that this Lease does not convey to the Lessee any right, title or interest in the Units except as Lessee. Accordingly, the Lessor and the Lessee have assumed for purposes of United States Federal income tax and (to the extent applicable) state and local income and franchise tax that (A) the Lessor as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), and state and local taxing statutes to an owner of property, including, without limitation, (i) cost recovery deductions under Section 168 of the Code, beginning in 1984, with respect to the unadjusted basis of each Unit, which basis shall be at least equal to the Purchase Price of each such Unit, computed on the basis of the percentages set forth in Section 168(b)(1) of the Code for "5-year property" placed in service after 1980 (the "Cost Recovery Deductions") and (ii) the investment credit in 1984 pursuant to Section 38 of the Code for "new section 38 property" equal to at least 8% of the basis of each Unit, which basis shall be at least equal to the Purchase Price of each such Unit (the "Investment Credit") (the Cost Recovery Deductions and Investment Credit are referred to collectively as the "Tax Benefits"); and (B) all amounts includible in the gross income of the Lessor with respect to the Units and all deductions and credits allowable to the Lessor with respect to the Units will be treated as derived from or allocable to, sources within the United States.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that the Lessee and any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will file such returns, take such actions and execute such documents

as may be reasonable and necessary to facilitate accomplishment of the intent thereof.

The Lessee represents and warrants for purposes of this § 18 that:

(A) when delivered and accepted under this Lease (1) the Units will not have been used by the Lessee or any affiliate thereof so as to preclude "the original use of such property" within the meaning of Section 48(b) of the Code from commencing with the Lessor, (2) the Lessor will have an adjusted basis (assuming that the Lessor elects to reduce Investment Credit from 10% to 8% instead of suffering a 5% basis reduction) for U.S. Federal income tax purposes in each Unit at least equal to the Purchase Price of such Unit plus such of the Lessor's transaction expenses allocable to such Unit which must be capitalized and included in the adjusted basis of such Unit for U.S. Federal income tax purposes (the "Capitalized Lessor's Cost"), (3) the Units will not require any improvement, modification or addition (other than ancillary items of removable equipment of a kind customarily selected and furnished by purchasers or lessees of similar locomotives) in order to be rendered complete for their intended use by the Lessee, (4) the Lessee or any shareholder or other person related to the Lessee shall have been fully reimbursed for any costs or amounts paid or incurred with respect to the Units and (5) each of the Units qualifies as "recovery property" and as "5-year property", as defined in Sections 168(c)(1) and 168(c)(2)(B) of the Code, respectively;

(B) the Lessee will at all times during the Lease Term cause each of the Units to be used in a manner such that at all times the Units will constitute "section 38 property" within the meaning of Section 48(a) of the Code;

(C) neither the Lessee nor any affiliate thereof has claimed or will claim the Cost Recovery Deductions or the Investment Credit;

(D) at all times during the Lease Term the Lessee will not use nor permit the use of the Units in any taxable year of the Lessor "predominantly outside the United States", within the meaning of Sections 168(f)(2) and 48(a)(2) of the Code;

(E) at all times during the Lease Term, the Lessee will not use nor permit the use of the Units outside the United States in such a manner as to affect the ability of the Lessor to treat, for Federal income tax purposes, each item of income, deduction and credit relating to all Units subject to this Lease as being derived from or allocable to, sources within the United States; and

(F) in the opinion of the Lessee it is reasonable for the Lessor to rely on the Builder's opinion that each Unit will have (i) a remaining estimated useful life at the end of the Lease Term of not less than 20% of the estimated useful life of each Unit at the beginning of the Lease Term, (ii) a fair market value at the end of the Lease Term (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during the Lease Term, and determined after subtracting from such value the cost, if any, for removal and redelivery of possession to the Lessor at the end of the Lease Term) equal to at least 20% of the Capitalized Lessor's Cost of each such Unit and (iii) a commercially feasible use, at the end of the Lease Term, to the Lessor (or a purchaser or lessee therefrom unrelated to the Lessee), within the meaning of Revenue Procedure 75-21, 1975-1 Cum. Bull. 715, as modified in Revenue Procedure 75-28, 1975-1 Cum. Bull. 752 and Revenue Procedure 76-30, 1976-2 Cum. Bull. 647.

If (i) by reason of any act of commission or omission (including any acts of commission or omission required or permitted to be taken pursuant to this Lease), misrepresentation, breach of any agreement, covenant, or warranty contained herein, or any exhibit hereto, on the part of the Lessee, the Lessor shall lose the right to claim or shall not claim (as the result of a good faith determination based upon the advice of Tax Counsel of General Electric Company (hereinafter referred to as "Tax Counsel") that such claim is not properly allowable by reason of any act of commission or omission, misrepresentation or breach of any agreement, covenant or warranty by the Lessee), shall suffer a disallowance of, or shall be required to recapture all or any portion of the Investment Credit or the Cost Recovery Deductions or (ii) the Lessor shall suffer a disallowance of or be required to recapture an amount of foreign tax credit which would have been allowable to the Lessor if it had not

participated in the transactions contemplated by this Lease (the "Foreign Tax Credit") (any of such events being a "Loss"), then the Lessee shall pay to the Lessor such amount or, from time to time, such amounts as, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local government or taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes, including penalties and interest, if any, payable by the Lessor from time to time as a result of any such Loss; provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Loss in question and the receipt of indemnification payments hereunder, the Lessor will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which the Lessor would have realized had such Loss not occurred. If, as a result of a Loss, the aggregate Federal, state or local income taxes, including penalties and interest, if any, paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Loss occurred, then the Lessor shall pay the Lessee the amount of such difference in taxes, plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause the Lessor not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee to the Lessor pursuant to this subsection (a) in respect of a Loss, less (y) the amount of all prior payments by the Lessor to the Lessee pursuant to this sentence. The amount payable to the Lessor pursuant to this paragraph shall be paid within 30 days after receipt of a written demand therefor from the Lessor (but not prior to the payment of additional tax which becomes due as the result of the Loss), accompanied by a written statement describing in reasonable detail such Loss and the computation of the amount so payable. Any payment due to the Lessee from the Lessor pursuant to this paragraph shall be paid on the later of (i) the date when the Lessor realizes any such savings in its income taxes or additional tax benefits, as the case may be or (ii) 30 days after the Lessor determines that such benefit is forthcoming.

Notwithstanding anything to the contrary hereinbefore set forth, no amount shall be payable to the Lessor as an indemnity under this § 18 in respect of any Loss to the extent that such Loss results directly from the occurrence of any of the following events:

(i) a voluntary transfer or other voluntary disposition by the Lessor of any interest in any Unit unless an Event of Default shall have occurred and be continuing;

(ii) the failure of the Lessor to claim (unless Tax Counsel has advised that such claim is not properly allowable by reason of acts of commission or omission, misrepresentations or breach of any agreement, covenant or warranty by the Lessee) the Investment Credit, the Cost Recovery Deductions or the Foreign Tax Credits;

(iii) any other acts or omissions of the Lessor inconsistent with the transactions contemplated hereby;

(iv) the failure of the Lessor to have sufficient liability for Federal income tax against which to credit the Investment Credit or the Foreign Tax Credit or to have sufficient income to benefit from the Cost Recovery Deductions;

(v) a Casualty Occurrence if the Lessee shall have paid the Casualty Value pursuant to § 9; and

(vi) changes in law effective after the execution and delivery of this Lease.

(b) Indemnity for Improvements. If at any time the Lessor is required by the Internal Revenue Service to include in its gross income an amount in respect of any improvement or addition to the Units or any accession referred to in § 11 (hereinafter called "Capital Expenditures"), then the Lessee shall pay to the Lessor, as an indemnity, such amount or amounts as, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amounts under the laws of any Federal, state or local taxing authority, shall be equal to the sum of the aggregate additional Federal, state or local income taxes payable by the Lessor from time to time as a result of such Capital Expenditures plus the amount of any interest,

penalties or additions to tax payable as a result of any such Capital Expenditures; provided that indemnification payments hereunder shall be an amount sufficient so that, after considering the tax and other effects of the Capital Expenditures and the receipt of indemnification payments hereunder, the Lessor will have the same anticipated after-tax rate of return on equity and periodic recovery of net cash flow which the Lessor would have realized had such Capital Expenditures not occurred. If as a result of any such Capital Expenditures the aggregate Federal, state or local income taxes paid by the Lessor for any taxable year shall be less than the amount of such taxes which would have been payable by the Lessor had no such Capital Expenditures been made, then the Lessor shall pay the Lessee the amount of such savings in taxes plus any additional tax benefits realized by the Lessor as the result of such payment; provided, however, that the Lessor shall not be obligated to make any payment pursuant to this sentence to the extent that any such payment would cause the Lessor not to realize the after-tax rate of return on equity and periodic recovery of net cash flow referred to in the preceding sentence or to the extent that the amount of such payment would exceed (x) the amount of all prior payments by the Lessee pursuant to this subsection (b) in respect of any Capital Expenditures less (y) the amount of all prior payments by the Lessor pursuant to this sentence. The amount payable to the Lessor pursuant to this subsection (b) shall be paid within 30 days after receipt of the written demand therefor from the Lessor (but not prior to five business days prior to payment of the additional Federal, state or local income tax which becomes due as a result of said inclusion) accompanied by a written statement describing in reasonable detail such inclusion and the computation of the amount so payable. Any payment due to the Lessee pursuant to § 18(c) shall be paid 30 days after the Lessor determines that such benefit is forthcoming, but in no event later than the date when the Lessor realizes any such savings in its income taxes or additional tax benefits, as the case may be.

(c) Contests. (1) If the Internal Revenue Service shall propose an adjustment in the Federal income taxes of the Lessor for which the Lessee would be required to indemnify the Lessor pursuant to subsection (a) or (b) of this § 18, then the Lessor shall give prompt notice to the Lessee of the proposed adjustment. If requested by the Lessee in a timely written request, the Lessor shall request an opinion from Sullivan & Cromwell or other counsel

selected by the Lessor and approved by the Lessee as to whether the basis in law and in fact in favor of allowance of the item proposed to be adjusted outweighs the basis in law and in fact to the contrary. If the opinion is to that effect and if the Lessee promptly requests the Lessor to do so, the Lessor shall contest the proposed adjustment; if such opinion shall be to the contrary, the Lessor shall consult with the Lessee about the advisability of a contest, and the Lessor shall in its full discretion decide whether to contest the proposed adjustment. With respect to any contest, Tax Counsel shall determine in its sole discretion the nature of all action to be taken to contest such proposed adjustment including (i) whether any action to contest such proposed adjustment shall initially be by way of judicial or administrative proceedings, or both, (ii) whether any such proposed adjustment shall be contested by resisting payment thereof or by paying the same and seeking a refund thereof, and (iii) if the Lessor shall undertake judicial action with respect to such proposed adjustment, the court or other judicial body before which such action shall be commenced. The Lessor shall have full control over any contest pursuant to this subsection (c) and shall not be obligated to appeal an adverse determination by any court, but the Lessor shall promptly advise the Lessee of all information it shall receive about action taken or proposed to be taken by the Internal Revenue Service and of all action proposed to be taken by the Lessor. At any time, whether before or after commencing to take the action set forth in this subsection (c), the Lessor may decline to take any such action with respect to all or any portion of a proposed adjustment by notifying the Lessee in writing that the Lessee is relieved of its obligation to indemnify the Lessor with respect to the adjustment or such portion, as the case may be.

(2) The Lessor shall not be required to take any action pursuant to this subsection (c) unless and until the Lessee shall have agreed to indemnify the Lessor in a manner reasonably satisfactory to the Lessor for any liability or loss which the Lessor may incur as a result of contesting the validity of any proposed adjustment and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with contesting such proposed adjustment (including fees and disbursements of counsel). If the Lessor determines to contest any adjustment by paying the additional tax and suing for a refund, the Lessee shall have paid to the

Lessor an amount equal to the sum on an after-tax basis of any tax, interest, penalties and additions to tax which are required to be paid. Upon receipt by the Lessor of a refund of any amounts paid by it based on the adjustment in respect of which amounts it shall have been paid an equivalent amount by the Lessee, the Lessor shall pay to the Lessee the amount of such refund together with any interest received by it on such amount. The Lessee shall be obligated to pay to the Lessor the amount specified in subsection (a) or (b) of this § 18 promptly after the Lessor has taken all the action that it has agreed in this § 18 to take, but in no event prior to the time the additional tax or reduction in refund resulting from such loss has occurred.

(d) Definition of Lessor. For purposes of this § 18, the term "Lessor" shall include any member of an affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(e) Survival of Indemnities. Notwithstanding any expiration or termination of this Lease, the liability of the Lessee to make indemnification payments pursuant to this § 18 shall continue to exist until such indemnity payments are made by the Lessee and the obligation of the Lessor to make refund payments to the Lessee pursuant to this § 18 shall continue to exist until such refund payments are made by the Lessor. All indemnity payments under this § 18 shall be made directly to the party entitled to indemnification.

§ 19. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 14% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable. Interest hereunder shall be determined on the basis of a 360-day year of twelve 30-day months.

§ 20. Assignment of Purchase Order. The Lessee hereby assigns, transfers and sets over to the Lessor, its successors and assigns all the right, title and interest of the Lessee in and to any contractual arrangements with the

Builder (the "Purchase Order"), in so far as the Purchase Order relates to the Equipment; provided, however, that it is agreed that all obligations of the Lessor to the Builder under the Purchase Order shall be superseded by the Sale Agreement, and the obligations of the Lessor to purchase and pay for the Equipment shall be exclusively and completely governed by, and subject to, the conditions provided herein and in the Sale Agreement.

The Lessee covenants with the Lessor, and the Builder as a third-party beneficiary hereof, that in the event of the exclusion of any unit of Equipment from the Sale Agreement pursuant to the second paragraph of Article 2 thereof or the first paragraph of Article 3 thereof, or in the event the Lessor is not obligated to purchase any unit of Equipment pursuant to this Lease and the Sale Agreement, the Lessee will be obligated to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms, and upon the satisfaction or waiver of any conditions, of the Purchase Order, and the Lessor will reassign, transfer and set over to the Lessee all the right, title and interest of the Lessor in and to the units so excluded and the Purchase Order to the extent relating thereto.

§ 21. Covenants. The Lessee will deliver or cause to be delivered to the Lessor, (a) as soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by the President, any Vice President, the senior financial officer, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its obligations under this Lease and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every agreement, obligation and condition contained therein, or, if a Default or Event of Default shall exist or have existed, specifying such Default or Event of Default and the nature and status thereof, (b) as soon as available, and in any event within 90 days after the end of the applicable accounting period, copies of the consolidated balance sheet of the Lessee as of the end of its first, second and third quarterly accounting periods in each of its fiscal years and copies of the related consolidated statements of income and retained earnings of the Lessee for the portion of its

fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by an authorized financial officer of the Lessee, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, (c) as soon as available, and in any event within 120 days after the end of each fiscal year, copies of the consolidated balance sheet of the Lessee as at the end of such fiscal year, and of the related consolidated statements of income and retained earnings of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by independent public accountants of recognized national standing, (d) as soon as available, a copy of the Annual Report to the Interstate Commerce Commission which is required to be filed by the Lessee, (e) as soon as available, copy of each Annual Report to stockholders and (f) with reasonable promptness, such other data and information as from time to time may be reasonably requested.

The Lessee will permit representatives of the Lessor, at Lessor's risk and expense, with respect to matters reasonably related to the transactions contemplated by this Lease, to visit and inspect any of the properties of the Lessee, to examine all its books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants (and by this provision the Lessee authorizes said accountants to discuss the finances and matters reasonably related to the financial condition of the Lessee) all at such reasonable times and as often as may be reasonably requested. Should any of the information obtained pursuant to this paragraph be considered by the Lessee to be confidential in nature and if the Lessee so states in writing specifically identifying such information, the Lessor will, to the extent that such action is, in their opinion, feasible and consistent with their interests in the transactions contemplated hereby, respect such confidentiality.

§ 22. Expenses. The Lessor agrees to pay or cause to be paid all Transaction Expenses. For the purpose hereof the term "Transaction Expenses" shall include (i) the reasonable fees, expenses and disbursements of White & Case, special counsel for the Lessor and Sullivan and Cromwell, special tax counsel for the Lessor and (ii) all other costs and fees (other than those of the Lessee's counsel) in

connection with the preparation, execution, delivery, recording and filing of, and the giving of public notice or publication with respect to, this Lease. The cost of any amendments, supplements and waivers with respect to this Lease shall be borne by the party requesting the same.

§ 23. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Lessor, at P.O. Box 8300, Stamford, Connecticut 06904, Attention of Manager-Operations-Transportation Financing Department; and

(b) if to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer-Financing;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 24. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 25. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 26. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed or deposited.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

CONSOLIDATED RAIL CORPORATION

By _____
Assistant Treasurer -
Financing

[Corporate Seal]

Attest:

Assistant Secretary

GENERAL ELECTRIC CREDIT
CORPORATION

By *W. H. Hays*
Title: MANAGER - RAIL FINANCING

[Corporate Seal]

Attest:

Oliver W. Champagne

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

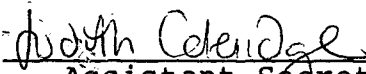
CONSOLIDATED RAIL CORPORATION

By 

Assistant Treasurer -
Financing

[Corporate Seal]

Attest:


Assistant Secretary

GENERAL ELECTRIC CREDIT
CORPORATION

By _____

Title: _____

[Corporate Seal]

Attest:

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF PHILADELPHIA)

SS.:

On this 24th day of May, 1984, before me personally appeared J. A. Warner, to me personally known, who, being by me duly sworn, says that he is Assistant Treasurer-Financing of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Catherine Aldinger
Notary Public

[Notarial Seal]

My Commission expires

CATHERINE ALDINGER
Notary Public, Phila., Phila. Co.
My Commission Expires Aug. 3, 1985

STATE OF CONNECTICUT)

COUNTY OF FAIRFIELD)

SS.:

On this ____ day of May, 1984, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he/she is a _____ of GENERAL ELECTRIC CREDIT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) ss.:
)

On this ____ day of ____, 1984, before me personally appeared _____, to me personally known, who, being by me duly sworn, says that he is Assistant Treasurer-Financing of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss.:
)

On this 25 day of May, 1984, before me personally appeared Richard A. Hayes, to me personally known, who, being by me duly sworn, says that he/she is a Manager Rail Financing of GENERAL ELECTRIC CREDIT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia A. Meenan
Notary Public

[Notarial Seal]

My Commission expires

PATRICIA A. MEENAN
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1988

SCHEDULE I TO LEASE

| <u>Type</u> | <u>Builder</u> | <u>Quantity</u> | <u>Lessee's Identification Numbers (Both Inclusive)</u> |
|--|--------------------------------|-----------------|---|
| 3000 h.p. Model C30-7A diesel-electric locomotive | General Electric Company | 50 | CR 6550-6599 |
| 3200 h.p. Model C32-8 diesel-electric locomotive | General Electric Company | 10 | CR 6610-6619 |

SCHEDULE II TO LEASE

Casualty Values

| <u>Semiannual Rental Payment Dates</u> | <u>Percentage of Purchase Price*</u> |
|--|--|
| Prior to First | 106.25 |
| First | 98.02 |
| Second | 97.81 |
| Third | 97.30 |
| Fourth | 96.49 |
| Fifth | 95.39 |
| Sixth | 93.97 |
| Seventh | 92.23 |
| Eighth | 90.05 |
| Ninth | 87.76 |
| Tenth | 85.40 |
| Eleventh | 82.99 |
| Twelfth | 80.50 |
| Thirteenth | 77.94 |
| Fourteenth | 75.32 |
| Fifteenth | 72.63 |
| Sixteenth | 69.85 |
| Seventeenth | 67.02 |
| Eighteenth | 64.09 |
| Nineteenth | 61.08 |
| Twentieth | 58.00 |
| Twenty-first | 54.83 |
| Twenty-second | 51.57 |
| Twenty-third | 48.22 |
| Twenty-fourth | 44.78 |
| Twenty-fifth | 41.23 |
| Twenty-sixth | 37.60 |
| Twenty-seventh | 33.86 |
| Twenty-eighth | 30.01 |
| Twenty-ninth | 26.07 |
| Thirtieth | 22.00 |

*Plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the fifth anniversary of the date of the Certificate of Acceptance for such Unit, an amount equal to the percentage of the Purchase Price of

such Unit suffering a Casualty Occurrence set forth below corresponding to the relevant time period:

The year ending on the day preceding the
following anniversary of the date of the
Certificate of Acceptance

Percentage of Purchase
Price to be Added

| | |
|--------|-------|
| First | 15.38 |
| Second | 12.31 |
| Third | 9.23 |
| Fourth | 6.15 |
| Fifth | 3.08 |

SCHEDULE III TO LEASE

Certificate of Acceptance

To: General Electric Credit Corporation
Box 8300
Stamford, Connecticut 06904

I, the duly authorized representative for Consolidated Rail Corporation (the "Lessee") under the Lease of Railroad Equipment dated as of April 15, 1984, do hereby certify that I inspected and accepted delivery thereunder of the following Units:

TYPE OF UNIT: Diesel electric locomotive
MODEL: C30-7A [C32-8]
DATE ACCEPTED:
NUMBER OF UNITS:
NUMBERED: CR _____

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto as provided in Schedule I to the aforesaid Lease of Railroad Equipment.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Ownership filed with the Interstate Commerce Commission".

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder named below for any warranties it has made with respect to the Equipment.

Authorized Representative of Lessee

BUILDER:

General Electric Company